



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 16, 2022

IN THE MATTER OF:

Appeal Board No. 621322

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding, effective May 10, 2021, that the wages paid to the claimant, a professional employee of an educational institution, cannot be used to establish a valid original claim during the period between two successive academic terms, on the basis that the claimant had reasonable assurance of performing services at the educational institution in the next academic term pursuant to Labor Law § 590 (10). The

claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed February 08, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. The record was not sufficiently developed on the determination as to whether the claimant was given reasonable assurance of continued employment. The parties should have another opportunity to submit additional testimony and other evidence on this issue.

At the further hearing, the employer's witness Leah Bautista (LB) will appear and testify further as to the nature of the employer; whether it is an educational institution as required by statute; a description of the classes; a description of the teachers; whether the employer operates on a semester

system; the requirements for enrollment; whether the employer is recognized by the New York State Board of Regents or any other governmental agency; whether the courses are accredited; whether degrees or certificates are issued by the employer. The employer witness, LB, will testify as to her qualifications to testify to reasonable assurance; her role in the assignment of courses to part-time faculty members; the courses taught by the claimant in the fall of 2020 and spring of 2021; the types of courses offered; how the courses were assigned; whether there were contingencies such as enrollment or budget effecting whether the courses would be held and any additional information necessary to complete the record.

Any documentary evidence in support of such testimony, including but not limited to the letters/emails from the employer offering the claimant class assignments for the fall of 2020 and the fall of 2021, as well as the collective bargaining agreement in effect for the relevant period, if any, shall be produced at hearing for entrance into the record after an opportunity for objection.

The Administrative Law Judge will then take any additional testimony and evidence necessary to complete the record.

Now, based on the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER